

भारत का राजपत्र The Gazette of India

असाधारण
EXTRAORDINARY

PART II—Section 2

भाग II—खण्ड 2

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं० 52]

नई दिल्ली, शुक्रवार, दिसम्बर 23, 1977/पौष 2, 1899

No. 52]

NEW DELHI, FRIDAY DECEMBER 23, 1977 PAUSA 2, 1899

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation

LOK SABHA

The following Bill was introduced in Lok Sabha on the 23rd December, 1977:—

BILL No. 154 OF 1977

A Bill further to amend the Code of Criminal Procedure, 1973

Be it enacted by Parliament in the Twenty-eighth Year of the Republic of India as follows.—

1. This Act may be called the Code of Criminal Procedure (Amendment) Act, 1977

Short title.

2 of 1974.

2. In the Code of Criminal Procedure, 1973 (hereinafter referred to as the principal Act), in sub-section (2) of section 1, in the proviso, after the figures "VIII," the figures and letter "VIIIA," shall be inserted.

Amendment of section 1.

3. After Chapter VIII of the principal Act, the following Chapter shall be inserted, namely:—

Insertion of new Chapter VIIIA.

'CHAPTER VIIIA

PREVENTION OF TREASONABLE AND OTHER DANGEROUS ACTIVITIES

124A. In this Chapter, unless the context otherwise requires,—

Definitions.

(a) "appropriate Government" means, as respects a detention order made by the Central Government or a person detained under such order, the Central Government, and as respects a detention order made by a State Government or by an officer subordinate to a State Government or as respects a person detained under such order, the State Government;

(b) "detention order" means an order made under section 124B;

(c) "detenu" means a person detained under a detention order;

(d) "foreigner" has the same meaning as in the Foreigners Act, 1946;

(e) "person" includes a foreigner;

(f) "prescribed" means prescribed by rules made by the Central Government;

(g) "State Government", in relation to a Union territory, means the Administrator thereof.

Power to
make
orders
detaining
certain
persons

124B. (1) The Central Government may,—

(a) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the defence of India or the security of India; or

(b) if satisfied with respect to any foreigner that with a view to regulating his continued presence in India or with a view to making arrangements for his expulsion from India,

it is necessary so to do, make an order directing that such person be detained.

(2) The Central Government or the State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it is necessary so to do, make an order directing that such person be detained.

(3) The State Government may, if satisfied with respect to any person that, with a view to preventing him from acting in any manner prejudicial to—

(a) the security of the State; or

(b) the maintenance of public order,

it is necessary so to do, make an order directing that such person be detained.

(4) For the purposes of sub-section (3),—

(a) "acting in any manner prejudicial to the security of the State" means making preparations for using, or attempting to use, or using, or instigating, inciting or otherwise abetting the use of, any lethal weapons (including firearms, explosive substances and corrosive substances), to overthrow or overawe the Government established by law in India;

(b) "acting in any manner prejudicial to the maintenance of public order" means—

(i) promoting, propagating, or attempting to create, feelings of enmity or hatred or disharmony on grounds of religion, race, caste or community;

(ii) making preparations for using, or attempting to use, or using, or instigating, inciting or otherwise abetting the use of, any lethal weapons (including firearms, explosive substances and corrosive substances) where such preparations, using, attempting, instigating, inciting or abetting, disturbs or is likely to disturb public order;

45 of 1860.

(iii) attempting to commit, or committing, or instigating inciting or otherwise abetting the commission of, mischief within the meaning of section 425 of the Indian Penal Code in respect of public property or means of public transportation where the commission of such mischief disturbs, or is likely to disturb, public order;

(iv) committing offences punishable with death or imprisonment for life or imprisonment for a term extending to seven years or more, where the commission of such offences disturbs, or is likely to disturb, public order.

Explanation.—In this sub-section,—

54 of 1959.

(a) “firearms” shall have the same meaning as in the Arms Act, 1959;

6 of 1908.

(b) “explosive substances” shall have the same meaning as in the Explosive Substances Act, 1908;

(c) “public property” means any property owned or controlled by the Government or by a corporation owned or controlled by the Government or by a society financed wholly or substantially by the Government.

(5) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct that, during such period as may be specified in the order, such District Magistrate or Commissioner of Police may, if satisfied as provided in sub-section (2) or in clause (b) of sub-section (3), exercise the powers thereunder:

Provided that the period specified in an order made by the State Government under this sub-section shall not, in the first instance, exceed three months, but the State Government may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.

(6) When any order is made under this section by an officer mentioned in sub-section (5), he shall forthwith report the fact to the State Government to which he is subordinate together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter and no such order shall remain in force for more than twelve days after the making thereof unless, in the meantime, it has been approved by the State Government.

(7) When any order is made or approved by the State Government under this section, the State Government shall, within seven days, report the fact to the Central Government together with the grounds on which the order has been made and such other particulars as, in the opinion of the State Government, have a bearing on the necessity for the order

(8) Save as otherwise provided in sub-section (6), an order made under this section by an officer mentioned in sub-section (5)

shall have the same force and effect as an order made by the State Government to which he is subordinate.

Execution
of
detention
orders.

124C. A detention order may be executed at any place in India in the manner provided for the execution of warrants of arrest under Chapter V of this Code.

Power to
regulate
place of
detention.

124D. Every person in respect of whom a detention order has been made shall be liable—

(a) to be detained in such place as the appropriate Government may, by general or special order, specify; and

(b) to be removed from one place of detention to another place of detention, whether within the same State or in another State, by order of the appropriate Government;

Provided that no order shall be made by a State Government under clause (b) for the removal of a person from one State to another State except with the consent of the Government of that other State.

Condi-
tions and
restric-
tions
as to
detention
and facili-
ties to
persons
under
detention
and relief
to their
families.

124E. (1) Every detenu shall, during the period of his detention, be subject to such conditions and restrictions and be entitled to such facilities as may be prescribed in respect of the matters specified in sub-section (2).

(2) The matters in respect of which conditions, restrictions and facilities may be prescribed in relation to detenus are the following, namely:—

(a) maintenance of discipline (including breaches of discipline and punishments therefor) and restrictions with regard to such other matters as may be required to be regulated for securing the purposes for which such persons are detained;

(b) medical, recreational and other facilities.

(3) Subject to any rules made in this behalf under section 124S, the appropriate Government shall, if satisfied that the means of subsistence of the family of a detenu have been rendered inadequate by reason of his detention, grant to such family such monetary relief as it may deem appropriate.

Explanation.—For the purposes of this sub-section, “family”, in relation to a detenu means his or her spouse, dependent children and dependent parents.

(4) The appropriate Government may, by general or special order, and whether by way of relaxation of the prescribed conditions and restrictions or otherwise, provide that in addition to the prescribed facilities, detenus may, at their option, be entitled to such facilities as may be specified in the order.

124F. No detention order shall be invalid or inoperative merely by reason—

Detention orders not to be invalid or inoperative on certain grounds.

(a) that the person to be detained thereunder is outside the limits of the territorial jurisdiction of the Government or officer making the order, or

(b) that the place of detention of such person is outside the said limits.

124G. (1) If the Central Government or the State Government or an officer specified in sub-section (5) of section 124B, as the case may be, has reason to believe that a person in respect of whom a detention order has been made has absconded or is concealing himself so that the order cannot be executed, that Government or officer may—

Powers in relation to absconding persons.

(a) make a report in writing of the fact to a Metropolitan Magistrate or a Judicial Magistrate of the first class having jurisdiction in the place where the said person ordinarily resides;

(b) by order notified in the Official Gazette direct the said person to appear before such officer, at such place and within such period as may be specified in the order.

(2) Upon the making of a report against any person under clause (a) of sub-section (1), the provisions of sections 82 to 86 (both inclusive) shall apply in respect of such person and his property as if the detention order made against him were a warrant issued by a Magistrate.

(3) If any person fails to comply with an order issued under clause (b) of sub-section (1), he shall, unless he proves that it was not possible for him to comply therewith and that he had, within the period specified in the order, informed the officer mentioned in the order of the reason which rendered compliance therewith impossible and of his whereabouts, be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

(4) Notwithstanding anything contained in any other provision of this Code, every offence under sub-section (3) shall be cognizable.

124H. (1) When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but not later than five days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government.

Grounds of order of detention to be disclosed to persons affected by the order.

(2) Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose.

124-I. (1) The Central Government and each State Government shall, whenever necessary, constitute one or more Advisory Boards for the purposes of this Chapter.

Constitution of Advisory Boards.

(2) Every such Board shall consist of a Chairman and two other members; and

(a) the Chairman shall be a serving Judge of the appropriate High Court and the other members shall be serving or retired Judges of that or any other High Court; and

(b) the Central Government or, as the case may be, the State Government shall appoint the Chairman and other members in accordance with the recommendations of the Chief Justice of the appropriate High Court:

Provided that the serving Judge of any High Court other than the appropriate High Court may be appointed as the Chairman if, having regard to the number of available Judges of the appropriate High Court and other relevant circumstances, the Chief Justice of the appropriate High Court so recommends.

Explanation.—In this section,—

(a) “appropriate High Court” means,—

(i) in the case of an Advisory Board constituted, or proposed to be constituted, by the Central Government, the High Court of Delhi;

(ii) in the case of an Advisory Board constituted, or proposed to be constituted, by a State Government, the High Court for that State;

(b) “High Court” means,—

(i) in relation to any State other than a Union territory, the High Court for that State;

(ii) in relation to a Union territory, to which the jurisdiction of a High Court has been extended under article 230 or, for which and for any other State or States a High Court has been established under article 231, the High Court whose jurisdiction has been so extended or, as the case may be, the High Court so established; and

(iii) in relation to any other Union territory, such High Court as the Central Government may, by notification in the Official Gazette, specify in this behalf.

Reference
to
Advisory
Boards.

124J Save as otherwise expressly provided in this Chapter, in every case where a detention order has been made under this Chapter, the appropriate Government shall, within four weeks from the date of detention under the order, place before the Advisory Board constituted by it under section 124-I the grounds on which the order has been made and the representation, if any, made by the person affected by the order and, in case where the order has been made by an officer, also the report by such officer under sub-section (6) of section 124B.

Procedure
of
Advisory
Board.

124K (1) The Advisory Board shall, after considering the materials placed before it (including the representation, if any, made under section 124H) and, after calling for such further information as it may deem necessary from the appropriate Government or from any person called for the purpose through the appropriate Government or from the person concerned, and if, in any particular case, it considers it essential so to do or if the person con-

cerned desires to be heard, after hearing him in person, submit its report to the appropriate Government within eight weeks from the date of detention

(2) The report of the Advisory Board shall specify in a separate part thereof the opinion of the Advisory Board as to whether or not there is sufficient cause for the detention of the person concerned.

(3) When there is a difference of opinion among the members forming the Advisory Board, the opinion of the majority of such members shall be deemed to be the opinion of the Board.

(4) Nothing in this section shall entitle any person against whom a detention order has been made to appear by any legal practitioner in any matter connected with the reference to the Advisory Board, and the proceedings of the Advisory Board and its report, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential.

124L. (1) In any case where the Advisory Board has reported under section 124K that there is, in its opinion, sufficient cause for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit.

Action upon the report of the Advisory Board

(2) In any case where the Advisory Board has reported under section 124K that there is, in its opinion, no sufficient cause for the detention of the person concerned, the appropriate Government shall revoke the detention order and cause the person to be released forthwith

124M. (1) A person detained in pursuance of a detention order which has been confirmed under section 124L may make representations to the appropriate Government for the revocation of the detention order made against him on any one or more of the following grounds, namely:—

Representations by detenu for revocation of the detention order against him.

(a) that he undertakes to desist from the activities for the prevention of which he has been detained and that he is willing to comply with all such conditions and restrictions as the appropriate Government may deem fit to impose in this behalf;

(b) that the circumstances in which the detention order was made against him have changed in material respects and that in the changed circumstances it is no longer necessary to keep him under detention; or

(c) that the condition of his health or the condition of his family or any members thereof or any other circumstances justifies or justify a compassionate view being taken of his case.

(2) The appropriate Government shall consider a representation received under sub-section (1) as soon as may be after it is received and if, after such consideration, that Government is of opinion that the detention order against the person making the representation shall not be revoked, it shall cause the representation to be placed before the Advisory Board for its opinion as early as possible but not later than sixty days from the date of receipt of the representation:

Provided that it shall not be necessary to place such representation before the Advisory Board if during the period of ninety days immediately preceding the date of receipt of such representation any other representation under sub-section (1) was received from such person.

(3) The Advisory Board shall consider the representation placed before it under sub-section (2) in such manner as it deems appropriate and submit its opinion to the appropriate Government as expeditiously as possible and the appropriate Government shall act in conformity with such opinion.

Maximum
period of
detention

124N. The maximum period for which any person may be detained in pursuance of any detention order which has been confirmed under section 124L shall be twelve months from the date of detention:

Provided that nothing contained in this section shall affect the power of the appropriate Government to revoke or modify the detention order at any earlier time.

Revoca-
tion of
detention
order.

124-O. (1) Without prejudice to the provisions of section 21 of the General Clauses Act, 1897, a detention order may, at any time, be revoked or modified,—

10 of 1897.

(a) notwithstanding that the order has been made by an officer mentioned in sub-section (5) of section 124B, by the State Government to which that officer is subordinate or by the Central Government;

(b) notwithstanding that the order has been made by a State Government, by the Central Government.

(2) The revocation of a detention order shall not bar the making of a fresh detention order under section 124B against the same person in any case where fresh facts have arisen after the date of revocation on which the Central Government or a State Government or an officer authorised under sub-section (5) of section 124B, as the case may be, is satisfied that such an order should be made.

(3) Nothing in sub-section (2) shall be construed to bar the making of a fresh order of detention against a person on the same facts as an earlier order of detention made against such person in any case where—

(i) the earlier order of detention or its continuance is not legal on account of any technical defect; or

(ii) the earlier order of detention has been revoked by reason of any apprehension, or for avoiding any challenge, that such order or its continuance is not legal on account of any technical defect:

Provided that in computing the maximum period for which a person against whom such fresh order of detention has been issued may be detained, the period during which such person was under detention under the earlier order of detention shall be excluded.

124P. (1) The appropriate Government may, at any time, direct that any person detained in pursuance of a detention order may be released for any specified period either without conditions or upon such conditions specified in the direction as that person accepts, and may, at any time, cancel his release.

Tempo-
rary
release of
persons
detained.

(2) In directing the release of any person under sub-section (1), the appropriate Government may require him to enter into a bond with or without sureties for the due observance of the conditions specified in the direction

(3) Any person released under sub-section (1) shall surrender himself at the time and place, and to the authority, specified in the order directing his release or cancelling his release, as the case may be.

(4) If the appropriate Government has reason to believe that any person who has failed to surrender himself in the manner specified in sub-section (3) has absconded or is concealing himself, that Government may make a report in writing of the fact to a Metropolitan Magistrate or a Judicial Magistrate of the first class having jurisdiction in the place where the said person ordinarily resides and thereupon the provisions of sections 82 to 86 shall apply in relation to such person as they apply in relation to a person who has absconded or is concealing himself so that a warrant issued by the Magistrate cannot be executed.

(5) If any person fails without sufficient cause to surrender himself in the manner specified in sub-section (3), he shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

(6) If any person released under sub-section (1) fails to fulfil any of the conditions imposed upon him under the said sub-section or in the bond entered into by him, the bond shall be declared to be forfeited and any person bound thereby shall be liable to pay the penalty thereof.

(7) Notwithstanding anything contained in any other section and save as otherwise provided in this section, no person against whom a detention order made under this Chapter is in force shall be released whether on bail or bail bond or otherwise.

124Q. No suit or other legal proceeding shall lie against the Central Government or a State Government, and no suit, prosecution or other legal proceeding shall lie against any person, for anything in good faith done or intended to be done in pursuance of this Chapter.

Protec-
tion of
action
taken in
good
faith.

Report
on the
adminis-
tration of
the Chap-
ter

124R. (1) Within three months from the expiry of each calendar year,—

(a) the President shall cause to be laid before each House of Parliament a report on the administration of this Act during that year;

(b) the Governor of each State shall cause to be laid before the Legislative Assembly or, as the case may be, each House of the Legislature of the State a report on the administration of this Chapter in that State during that year;

(c) the Administrator of each Union territory having a Legislative Assembly shall cause to be laid before the Legislative Assembly of the Union territory a report on the administration of this Chapter in that Union territory during that year.

(2) For the purpose of preparing any report referred to in clause (a) of sub-section (1), the Central Government may call for any periodic or other report from any State Government.

Power to
make
rules.

124S. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Chapter.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the matters referred to in sub-section (2) of section 124E;

(b) the limit subject to which monetary relief may be granted to families of detenus under sub-section (3) of section 124E and other matters relating to such relief;

(c) the matters which should be dealt with in the reports referred to in section 124R;

(d) any other matter which has to be or may be prescribed under this Chapter.

(3) Every rule made by the Central Government under this Chapter shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Repeal
of Act
26 of 1971.

4. (1) The Maintenance of Internal Security Act, 1971, is hereby repealed.

(2) The cesser of operation, by reason of such repeal, of any order of detention against any person in force under the said Act immediately before such repeal shall not bar the making of a fresh order of detention against such person under Chapter VIIIA of the Code of Criminal

2 of 1974.

Procedure, 1973, on all or any of the facts on which the order which so ceased to operate was made:

Provided that in computing the maximum period for which such person may be detained under such fresh order, the period during which such person was under detention under the order which so ceased to operate shall be excluded.

2 of 1974.

(3) The provisions of sub-section (2) shall have effect notwithstanding anything contained in section 124-O of the Code of Criminal Procedure, 1973.

STATEMENT OF OBJECTS AND REASONS

The policy of the Government with regard to the Maintenance of Internal Security Act, 1971 was enunciated in the Address of the Vice-President acting as President to the Joint Session of both Houses of Parliament on 28th March, 1977, in the following words:—

“Having regard to the gross abuse to which Maintenance of Internal Security Act has been put during the last two years, a thorough review of the Act will be undertaken with a view to repealing it and examining whether the existing laws need further strengthening to deal with economic offences and security of the country without denying the right of approach to courts.”.

2. Considering the complexity and nature of the problems, particularly in respect of security, public order and prices, faced by the country, it is the considered view of the Government that the administration would be greatly handicapped in dealing effectively with the same in the absence of powers of preventive detention. Government are, however, fully conscious of the gross abuse to which the powers under the Maintenance of Internal Security Act were put during the Emergency. This was made possible on account of certain amendments made in the law during the Emergency, the Presidential Order under article 359 of the Constitution taking away the right of persons to move the courts for enforcement of Fundamental Rights, the severe curbs on the freedom of the Press and the general climate of fear created during the Emergency. These factors are no longer operative.

3. Accordingly, it is proposed to include a new Chapter in the Code of Criminal Procedure, 1973 to provide for preventive detention. However, having regard to the past experience, the previous laws have been very closely examined with a view to building into the new Chapter appropriate safeguards in order to completely eliminate the possibility of its misuse in future. In particular, the expressions “acting in any manner prejudicial to the security of the State” and “acting in any manner prejudicial to the maintenance of public order” have been so defined as to remove any possibility of the use of this law for political purposes. Also, the composition of the Advisory Boards and the manner of their appointment have been so modified that every detention would be subject to independent judicial review which would inspire public confidence as well as act as a great restraining influence on the executive.

4. The Bill seeks to achieve the above objects.

NEW DELHI;
The 20th December, 1977

CHARAN SINGH.

FINANCIAL MEMORANDUM

New section 124E (contained in the Chapter which is proposed to be inserted in the Code of Criminal Procedure, 1973, by clause 3 of the Bill) provides for the making of rules and orders, *inter alia*, in respect of facilities which may be provided to detenus. The section also provides that the appropriate Government may, if satisfied that the means of subsistence of the family of a detenu have been rendered inadequate by reason of his detention, grant to such family such monetary relief as it may deem appropriate. New section 124-I, forming part of the same Chapter, provides for the constitution of Advisory Boards by the Central Government.

2 In the case of persons detained in pursuance of orders made by the Central Government, the expenditure in respect of facilities to such persons, monetary relief to families of detenus in cases where the same is permissible and the expenditure in connection with the Advisory Boards will have to be met by the Central Government. The actual expenditure in respect of facilities to detenus and monetary relief to families of detenus will depend upon various contingencies such as the number of persons who may be detained in pursuance of orders issued by the Central Government, the nature of facilities that may be provided for under the rules, etc., and it is not possible to visualise at this stage the quantum of such expenditure. Some expenditure of a recurring nature will have to be incurred in connection with the Advisory Boards and it is not possible at this stage to make an accurate estimate of the expenditure which may be involved.

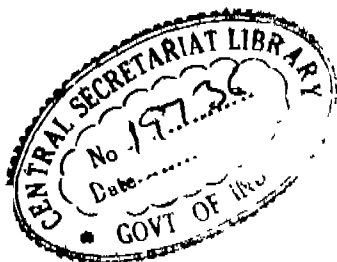
3. The provisions of the Bill do not involve any other expenditure of a recurring or non-recurring nature.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 of the Bill seeks to insert a new Chapter, namely, Chapter VIIIA, consisting of sections 124A to 124S, in the Code of Criminal Procedure, 1973.

2 Section 124S empowers the Central Government to carry out the provisions of the said Chapter. The matters in respect of which rules may be made relate, among others, to the matters referred to in sub-section (2) of section 124E (conditions and restrictions as to detention and facilities to persons under detention), the limit subject to which monetary relief may be granted to families of detenus under sub-section (3) of the said section and other matters relating to such relief and the matters which should be dealt with in the reports referred to in section 124R.

3. The matters in respect of which rules may be made under section 124S and the matters in respect of which orders may be made under section 124E are matters of detail and procedure and it is not practicable to provide for them in the Bill itself. The delegation of legislative power is, therefore, of normal character.



AVTAR SINGH RIKHY,
Secretary.